



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 4184-02
2 December 2002



This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 15 November 2002. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that on 27 January 1997 a medical board gave you a diagnosis of chronic musculoskeletal low back pain, and recommended that you case be referred to the Physical Evaluation Board (PEB). After being advised of the findings and recommendation of that board on 12 February 1997, you declined to submit a statement in rebuttal thereto. You did not disclose or complain of any other conditions you felt rendered you unfit for duty at that time. On 9 June 1997, the PEB found you unfit for duty because of your back pain, which it rated at 10%, and recommended that you be discharged with entitlement to disability severance pay. You accepted those findings and recommendations on 24 June 1997, and waived your right to a formal hearing. You were discharged by reason of physical disability on 15 August 1997. On 25 August 1998, the Department of Veterans Affairs (VA) granted you 10% ratings for low back pain, a fungal infection, headaches, sore knees, and neck strain, and it denied your request for service connection for nine conditions which did not exist and/or were not incurred during your military service.

The Board noted that unlike the VA, which rates all conditions incurred in or aggravated by

military service, the military departments rate only those conditions which render a service member unfit to perform the duties of his office, grade, rank or rating by reason of physical disability. As you have not demonstrated that your low back condition was ratable above 10% disabling, or that you were entitled to disability ratings from the Navy for any other conditions, the Board was unable to recommend any corrective action in your case.. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director